

1 KEVIN V. RYAN (SBN 118321)
2 United States Attorney
3 JOANN M. SWANSON (SBN 88143)
4 Chief, Civil Division
5 EDWIN L. JOE (SBN 112328)
6 Special Assistant United States Attorney

7 455 Market Street, 6th Floor
8 San Francisco, California 94105-2420
9 Telephone: (415) 744-8494
10 Facsimile: (202) 481-1810 or (415) 744-6812
11 Email: edwin.joe@sba.gov

12 Attorneys for Federal Plaintiff



05 - 121

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 **UNITED STATES OF AMERICA,**
17 **Plaintiff,**

18 **v.**

19 **MILEPOST VENTURES, L.P.**

20 **Defendant.**

Civil Case No. C 05 – 1195 EMC

E-Filing

21 **COMPLAINT FOR RECEIVERSHIP AND INJUNCTION**

22 COMES NOW Plaintiff, the United States of America, on behalf of its agency, the Small
23 Business Administration, and for its cause of action states as follows:
24

25
26
27 //
28

PARTIES, JURISDICTION AND VENUE

1
2 1. This is a civil action brought by the United States on behalf of its agency, the
3 Small Business Administration (hereinafter, "SBA," "Agency" or "Plaintiff"), whose central
4 office is located at 409 Third Street, S.W., Washington, DC 20416.
5

6 2. Jurisdiction is conferred on this Court by virtue of the Small Business Investment
7 Act of 1958, as amended (hereinafter, the "Act"), Sections 308(d), 311, and 316; 15 U.S.C.
8 §§687(d), 687c, 687h; the Small Business Act, 15 U.S.C. §634(b)(1); and 28 U.S.C. §1345.
9

10 3. Defendant, Milepost Ventures, LP (hereinafter "Milepost" or "Licensee"), is a
11 Delaware limited partnership formed on or about May 27, 1998 that maintains its principal place
12 of business at One Embarcadero Center, Suite 3250, San Francisco, California 94104. Venue is
13 therefore proper under 15 U.S.C. §§ 687(d), 687h and 28 U.S.C. §1391(b).
14

Statutory and Regulatory Framework

15 4. Milepost was licensed by SBA as a Small Business Investment Company
16 ("SBIC") pursuant to Section 301(c) of the Act, 15 U.S.C. §681(c) on or about December 4,
17 1998 under SBA License No. 09/79-0417 solely to do business under the provisions of the Act
18 and the regulations promulgated thereunder.
19

20 5. Milepost's sole general partner is Milepost Ventures Management, Inc.
21

22 6. Milepost's Limited Partnership Agreement contains an acknowledgement by
23 Milepost that the SBIC would be operated in accordance with the Regulations and the Act at all
24 times.
25

26 7. Section 308(c) of the Act, 15 U.S.C. §687(c), empowers SBA to prescribe
27 regulations to carry out the provisions of the Act and to govern the operations of SBICs. SBA
28

has duly promulgated such regulations, which are codified at Title 13 of the Code of Federal Regulations, Part 107 (the "Regulations").

8. Section 303 of the Act, 15 U.S.C. §683, authorizes SBA to provide leverage to licensed SBICs.

9. Pursuant to Section 303 of the Act, 15 U.S.C. §683, SBA provided funds to Milepost through the purchase and/or guaranty of the following Participating Securities, a form of Leverage, as those terms are defined under the Regulations, in the total principal amount of \$16,265,000 as follows:

<u>Loan No.</u>	<u>Amount</u>	<u>Date Issued</u>	<u>Rate</u>
02025351-04	1,000,000	7/22/99	7.540
02025352-02	1,250,000	11/03/99	8.017
02025353-00	1,000,000	02/02/99	8.017
02025354-09	250,000	12/02/99	8.017
02025355-07	1,000,000	12/29/99	8.017
02025356-05	1,000,000	1/19/00	8.017
02025357-03	1,000,000	1/27/00	8.017
02025358-01	200,000	2/03/00	8.017
02025359-10	225,000	04/04/00	7.449
02025360-02	750,000	7/17/00	7.449
02025361-00	325,000	7/25/00	7.449
02027751-06	575,000	7/25/00	7.449
02027752-04	175,000	8/07/00	7.449
02027753-02	175,000	8/07/00	7.449
02027754-00	650,000	8/14/00	7.449
02027755-09	250,000	8/14/00	7.449
02027756-07	150,000	9/15/00	6.640
02027757-05	220,000	9/15/00	6.640
02027758-03	625,000	9/21/00	6.640
02027759-01	1,500,000	9/21/00	6.640
02027760-04	225,000	12/15/00	6.640
02027761-02	1,000,000	12/15/00	6.640
02027762-00	50,000	3/2/01	6.344
02027763-09	50,000	3/9/01	6.344
02027764-07	50,000	3/20/01	6.344
02027765-05	750,000	3/30/01	6.344
02027766-03	200,000	4/10/01	6.344

02027767-01	50,000	8/29/01	6.030
02027768-10	700,000	11/20/02	4.524
02027769-08	870,000	4/17/03	1.820

Currently, the entire amount of the Participating Securities balance of \$16,265,000 remains outstanding.

10. The Participating Securities described in paragraph 9, above, are subject to and incorporated by reference in the Regulations, including but not limited to the provision of 13 C.F.R. §§107.1820-1850 and §107.507.

11. Section 308(d) of the Act, 15 U.S.C. §687(d), provides that upon determination and adjudication of noncompliance or violation of the Act or the Regulations, all of the rights, privileges and franchises of a Licensee such as Milepost may be forfeited and the company may be declared dissolved.

12. Section 311 of the Act, 15 U.S.C. §687c, provides that if a determination by SBA that a Licensee such as Milepost, or any other person, has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the Act or of any Rule or Regulation promulgated pursuant to the Act, or of any order issued under the Act, then SBA may make application for an injunction, and such Court shall have jurisdiction of such action and grant a permanent or temporary injunction, or other relief without bond, upon a showing that such Licensee has engaged in or is about to engage in any such acts or practices. The Court is authorized to appoint SBA to act as receiver for such Licensee.

COUNT ONE

CAPITAL IMPAIRMENT

13. Paragraphs 1 through 12 are incorporated herein by reference.

1 14. Section §107.1830(c) of the Regulations requires that Milepost not have a
2 condition of Capital Impairment of greater than 85%, as that term is defined under the
3 Regulations.
4

5 15. Based on the SBA Form 468 submitted by Milepost for the period ending
6 December 31, 2002, SBA determined that Milepost had a condition of Capital Impairment
7 percentage, as that term is defined under the Regulations, of 182%.
8

9 16. By letter dated April 8, 2003, SBA notified Milepost that SBA was placing
10 Milepost into Restrictive Operations, pursuant to 13 C.F.R. § 107.1820(e)(3), and was imposing
11 Restrictive Operation Remedies pursuant to 13 C.F.R. § 107.1820(f) and gave Milepost 15
12 (fifteen) days to cure their condition of capital impairment.
13

14 17. Milepost failed to cure its condition of capital impairment. Therefore as a further
15 consequence of its condition of capital impairment, Milepost was transferred to liquidation status
16 by SBA on April 25, 2003.
17

18 18. To date, Milepost has failed to cure its condition of Capital Impairment. The
19 entire principal balance of Participating Securities purchased by SBA of \$16,265,000 remains
20 outstanding.
21

22 19. Milepost's failure to cure its condition of Capital Impairment is a violation of
23 §107.1830(b) of the Regulations.
24

25 20. Milepost's non-compliance with its terms of Leverage under
26 13 C.F.R. §107.1830(b) is also a violation of Section 13 C.F.R. §107.507(a) of the Regulations
27 for nonperformance of the terms of its Participating Securities and nonperformance of its
28 Application for SBIC License, which is a written agreement with SBA.

1 21. SBA has determined that Milepost is not in compliance with its terms of Leverage
2 due to its uncured condition of Capital Impairment and is in violation of the Regulations, 13
3 C.F.R. §§107.1830(b) and 507(a).

4
5 22 As a consequence of Milepost's violation of 13 C.F.R. §§107.1830(b) and 507(a)
6 of the Regulations, SBA is entitled to the injunctive relief provided under the Act, 15 U.S.C.
7 §687(d) and 687c, including the appointment of SBA as Receiver of Milepost.

8
9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff prays as follows:

11 A. That injunctive relief, both preliminary and permanent in nature, be granted
12 restraining Milepost, its managers, general partners, directors, officers, agents, employees, and
13 other persons acting in concert or participation therewith from: (1) making any disbursements of
14 Milepost's funds; (2) using, investing, conveying, disposing, executing or encumbering in any
15 fashion any funds or assets of Milepost, wherever located; and (3) further violating the Act or the
16 Regulations promulgated thereunder.

17
18 B. That this Court determine and adjudicate Milepost's noncompliance with and
19 violation of the Act and the Regulations promulgated thereunder.

20 C. That this Court, pursuant to 15 U.S.C. §687c, take exclusive jurisdiction of
21 Milepost and all of its assets, wherever located, appoint SBA as receiver of Milepost for the
22 purpose of marshaling and liquidating the assets of Milepost and satisfying the claims of
23 creditors as determined by the Court, and such other relief as contained in the Order filed
24 simultaneously herewith.

25
26 //
27
28

1 D. That this Court grant such other relief as may be deemed just and equitable.

2 Respectfully submitted,

3 KEVIN V. RYAN
4 UNITED STATES ATTORNEY

5
6 Dated: March 23, 2005

By: /s/ Edwin L. Joe
7 EDWIN L. JOE
8 Special Assistant United States Attorney

9 Of Counsel:

10
11
12 ARLENE M. EMBREY, ESQ.
13 Trial Attorney

14 U.S. Small Business Administration
15 409 Third Street, Seventh Floor
16 Washington, D.C. 20416
17 Telephone: (202) 205-6976
18 Facsimile: (202) 481-0324
19 Email: arlene.embrey@sba.gov
20
21
22
23
24
25
26
27
28